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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 JUKIN MEDIA, INC., a California
11 corporation,

12 Plaintiff,

13 v.

14 ZOOMIN.TV, a Dutch company,

15 Defendant.

CASE NO. 15-CV-7158-GW-FFM

Hon. George H. Wu

**PLAINTIFF JUKIN MEDIA,
INC.'S OPPOSITION TO MOTION
TO DISMISS**

Date: December 14, 2015
Time: 8:30 a.m.
Location: Courtroom 10

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1 Plaintiff Jukin Media, Inc. (“Plaintiff” or “Jukin”) submits this memorandum
 2 of law in opposition to Defendant Zoomin.TV’s (“Defendant” or “Zoomin”)
 3 motion to dismiss (the “Motion”).

4 **I. INTRODUCTION**

5 Zoomin’s motion relies upon a series of false statements that find no support
 6 in the facts. The facts instead reveal that (1) this court has specific personal
 7 jurisdiction over Zoomin; and (2) Zoomin was personally served with process.

8 Zoomin’s motion denies it had *any* knowledge of the alleged infringement
 9 prior to the filing of this lawsuit. Mot. at 7. Yet, Zoomin acknowledged that it
 10 infringed Jukin’s copyrighted videos (“Jukin Original Videos”) in documented
 11 email correspondence. *See* Declaration of Cameron Saless (“Saless Decl.”), ¶ 8,
 12 Ex. A. As the email correspondence shows, Jukin spent significant time trying to
 13 get Zoomin to address the infringements to avoid litigation and Zoomin repeatedly
 14 refused. *Id.*

15 Zoomin’s motion also claims it “does not engage in business activities in the
 16 U.S.” Mot. at 2. Zoomin’s corporate website, and various digital media
 17 publications, however, acknowledge that Zoomin maintains offices in Los
 18 Angeles, California, and Miami, Florida. *See* Declaration of Tamany Vinson
 19 Bentz (“Bentz Decl.”), ¶ 3, Exs. A. One such publication reveals that Jukin
 20 coordinates business development, sales, and marketing, for the Western and
 21 Midwestern United States from its Los Angeles office. *Id.*, Ex. E. Zoomin further
 22 enjoys partnerships with California-based companies Yahoo! and YouTube, and
 23 North America represents 18% of Zoomin’s web audience, 11% of Zoomin’s
 24 mobile audience, and Zoomin characterizes the United States as a “key market”
 25 responsible for 420 million monthly views. Zoomin has also visited Jukin’s Los
 26 Angeles office to discuss terms for a business relationship. Compl., ¶ 17; Saless
 27 Decl., ¶ 5. Zoomin does not address any of these issues in its motion and instead
 28 simply relies on its conclusory false statement.

Zoomin contends that it was not properly served because Matt J. Slan, who received service of process, is not permitted to receive service of process on behalf of Zoomin and is merely a “free lance consultant.” Mot. at 13. Zoomin’s corporate website, however, reveals that Mr. Slan is Zoomin’s United States Vice-President of Sales and Business Development. *See* Bentz Decl. ¶ 4, Ex. B. Online digital media news outlets report the same. *Id.*, Exs. C-E. Under the circumstances, service of process was properly executed because, regardless of whether or not Mr. Slan is a managing or general agent of Zoomin, it is fair, reasonable, and just to imply that Mr. Slan had authority to receive service due to Zoomin’s public representations about Mr. Slan’s authority and role at the company. In fact, Mr. Slan provided notice of the lawsuit to other officers at Zoomin. Document 12-3, Declaration of Matt Slan at ¶ 6.

Zoomin also claims it was not properly served because papers were left with a general receptionist at leased office space. Mot. at 13. In contrast, the process server who served Slan with process acknowledged, in a sworn affidavit, that he personally served Slan. The process server further confirmed that the individual served matched the picture of Mr. Slan that is on Zoomin’s website.

II. STATEMENT OF FACTS

A. Background

Jukin is a California corporation that primarily engages in the licensing and acquisition of short-form videos in various commercial applications. Complaint (“Compl.”)(Dkt. 1), ¶ 11. Jukin also monetizes videos it acquires via broadcast on Jukin’s own branded YouTube channels, on several of its websites including www.JukinVideo.com, and through other strategic partnerships. *Id.* ¶ 12. Jukin invests in substantial research and analytical efforts to discover videos that it believes may be interesting to the public. *Id.* ¶ 11.

Initially, both Jukin and Zoomin considered a relationship under which Zoomin would distribute and monetize Jukin content on a non-exclusive basis

through Zoomin’s channels of distribution. Saless Decl., ¶ 2. Zoomin representatives even visited Jukin’s Los Angeles headquarters to engage in business discussions. Compl., ¶ 17; Saless Decl., ¶ 5. During the course of their courtship, Jukin became aware that many of the Jukin Original Videos were showing up on various Zoomin channels of distribution. Saless Decl., ¶ 6. Email correspondence between several Jukin executives and Zoomin’s CEO, Jan Riemens, indicates that Riemens (1) was aware of the infringement; and (2) intended to take affirmative steps to remove infringing content. *Id.*, ¶ 8, Ex. A. Over time, Riemens correspondence became increasingly hostile, and eventually, Riemens emphatically expressed that Zoomin would not remove any infringing content. *Id.* As a result, Jukin had no choice but to file the present action.

Due to Zoomin’s continued use of the thirty-four copyrighted videos, Jukin has lost licensing fees that Zoomin—or third parties—should have paid for use of the videos, as well as the ability to monetize the videos through ad placements. Compl., ¶ 130. Jukin is also losing out on the ability to capture potential new viewers, who lose incentive to visit Jukin’s websites, after they watch the Jukin Original Videos on Zoomin’s channels of distribution. *Id.* Further, Zoomin’s actions damage Jukin’s potential relationship with Zoomin’s partners. If, for example, a video-sharing website is already receiving Jukin Original Videos via Zoomin, it has no incentive to pay Jukin.

B. Zoomin’s “Forum-Related” Contacts

Zoomin routinely republishes Jukin Original Videos on Zoomin-affiliated websites, often citing infringing YouTube accounts as the video credit. Compl., ¶¶ 15-20. When Jukin approached Zoomin regarding Zoomin’s willful infringement of Jukin’s copyrights, Jukin was met with flippant answers from Jan Riemens, Zoomin’s CEO, or no response at all. Saless Decl., ¶ 8, Ex. A. Despite documented email correspondence between Jukin and Riemens, Riemens maintains that Zoomin “never received notice of the alleged infringement” prior to

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Zoomin being named a party in the instant action. Mot. at 7; Declaration of Jan Riemens (“Riemens Decl.”), ¶ 10. Zoomin continues to publish Jukin Original Videos on Zoomin-affiliated websites.

Aside from Zoomin’s willful infringement of the copyrights of Jukin, a California corporation, Zoomin maintains other significant contacts in this State. Zoomin’s corporate website makes clear that Zoomin has an office in Los Angeles. Bentz Decl., ¶ 3, Ex. A. Various digital media trade publications, readily available online, reported Zoomin’s U.S. expansion, and further explain that Zoomin’s Los Angeles office is responsible for business development, sales, and marketing, in the Western and Midwestern United States. Bentz Decl., ¶¶ 7-9, Exs. E-G. These publications identify the following employees of Zoomin’s Los Angeles office: Matt J. Slan, Vice President of Sales and Business Development; and Tina Salem, United States Advertising Sales. *Id.* One such publication indicates that Zoomin plans to grow its California office. *Id.*, Ex. G. Zoomin has also visited Jukin’s Los Angeles office to discuss partnership terms. Compl., ¶ 17; Saless Decl., ¶ 5.

In addition, Zoomin’s publically accessible Media Kit, made available on Zoomin’s corporate website, indicates that among other publishers of web content, Zoomin partners with both Yahoo! and YouTube, which are both headquartered in California. Bentz Decl., ¶ 6, Ex. D. Similar marketing material made available on Zoomin’s corporate website indicates that North America represents 18% of Zoomin’s web audience, 11% of Zoomin’s mobile audience, and that the United States is a “key market” responsible for 420 million monthly views. *Id.*, Ex. C.

Finally, Zoomin actively recruits “freelance video journalists” in the United States responsible for submitting online videos to Zoomin. Bentz Decl., ¶ 10. A cursory examination of the business-oriented social networking website LinkedIn illustrates that of the “top 8 Video Journalist profiles at Zoomin.tv,” one such video journalist is based out of Los Angeles. *Id.*, Ex. F.

C. Service of Process

Zoomin's corporate website plainly states that one of its offices is located at 1100 Glendon Avenue, Los Angeles, CA 90024. Bentz Decl., ¶ 3, Ex. A. A receptionist at this location identified Matt J. Slan as the Zoomin person in Los Angeles. *Id.* In several publically accessible websites, including Zoomin's corporate website, Mr. Slan is listed as an officer, and specifically the Vice-President of Sales and Business Development in the United States. *Id.*, Exs. C-F. The Zoomin corporate website includes a photograph of Mr. Slan. *Id.*, Ex. B.

Jukin hired a reputable process server who personally served Slan with process. Document 10. In a sworn Notice of Service, process server Alan Juarez explained that he personally served Matt Slan, Zoomin's U.S. Vice-President of Sales and Business Development, on September 30, 2015 at 9:35 a.m. *Id.* Mr. Suarez further recounted, in his confirmation to Jukin's counsel, that he had a photograph of Slan, and the person served matched the photo. Bentz Decl. at ¶12, Ex. I. Upon receiving the summons and complaint, Slan timely mailed a copy of the papers to Zoomin's headquarters in the Netherlands. Slan Decl., ¶ 6.

III. ARGUMENT

A. Zoomin Is Subject to Specific Personal Jurisdiction

The facts as alleged and sworn in this case establish this Court may exercise specific personal jurisdiction over Zoomin. The Ninth Circuit analyzes specific jurisdiction according to a three-prong test: (1) whether the non-resident defendant "purposefully direct[ed] his activities or consummate[d] some transaction" with the forum state, or otherwise performed some act by which the defendant "purposefully avail[ed] himself of the privilege of conducting activities in the forum;" (2) whether the claim at issue "arises out of or relates to the defendant's forum-related activities;" and (3) whether the exercise of jurisdiction is reasonable. *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'antisemitisme*, 433 F.3d 1199, 1205-06 (9th Cir. 2006) (*per curiam*) (citing *Schwarzenegger v. Fred Martin*

1 *Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)).

2 The Plaintiff has the burden of establishing the first two prongs of the
 3 analysis. Where, as here, the court does not hold an evidentiary hearing, the
 4 plaintiff meets his burden by making only “a *prima facie* showing of jurisdiction to
 5 avoid the defendant’s motion to dismiss.” *Rio Props. v. Rio Int’l Interlink*, 284
 6 F.3d 1007, 1019 (9th Cir. 2002). That is, plaintiff “need only demonstrate facts
 7 that *if true* would support jurisdiction over the defendant. *Ballard v. Savage*, 65
 8 F.3d 1495, 1498 (9th Cir. 1995) (emphasis added). In this regard, “uncontroverted
 9 allegations in the complaint must be taken as true,” and “[c]onflicts between
 10 parties over statements contained in affidavits must be resolved in the plaintiff’s
 11 favor.” *Dole Food Co. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002). Once the
 12 plaintiff establishes the first two elements, the burden shifts to the defendant to
 13 present a “compelling case” that the exercise of jurisdiction would not be
 14 reasonable. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985).

15 **B. Zoomin Purposely Directed Its Activities Toward California**

16 In cases involving tortious conduct, the Ninth Circuit typically employs an
 17 “effects test” for purposeful direction analysis. *Mavrix Photo, Inc. v. Brand*
 18 *Technologies, Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011). This “effects test,” based
 19 on *Calder v. Jones*, 465 U.S. 783 (1984), requires that the nonresident defendant
 20 (1) commit an intentional act; (2) that was expressly aimed at the forum state; (3)
 21 and caused harm that the nonresident defendant knew would likely be suffered in
 22 the forum state. *Mavrix Photo*, 647 F.3d at 1228.

23 **1. Zoomin Committed an Intentional Act**

24 In *Mavrix*, the Ninth Circuit summarily disposed of the “intentional act”
 25 requirement in the copyright infringement action because there was “no question
 26 that [defendant] acted intentionally when it reposted infringing works on its
 27 website.” *Id.* at 1229. Similarly, in *Washington Shoe Co. v. A-Z Sporting Goods*
 28 *Inc.*, the Ninth Circuit held that a non-resident defendant acted intentionally when

1 it continued to engage in copyright infringement even after it received notice of the
 2 infringement from the copyright holder. 704 F.3d 668, 675 (9th Cir. 2012).

3 Here, Jan Riemens, Zoomin's CEO, was expressly notified of the existence
 4 of Jukin's copyrighted material on Zoomin's website via email. Saless Decl., ¶¶ 7-
 5 8, Ex. A. In fact, Riemens responded to this notification with an email stating that
 6 he would investigate the matter personally. *Id.* ¶8, Ex. A. These emails are in
 7 direct contradiction to Zoomin's contention that it never received notice of the
 8 infringement prior to the commencement of this action. Mot. at 7; Riemens Decl.,
 9 ¶ 10. In addition to the specific notice Jukin provided, many of the infringed
 10 videos contained licensing information in the description of the video on YouTube,
 11 e.g. "Jukin Media Verified (Original) *For licensing/permission to use: Contact:
 12 licensing@jukinmedia.com." Compl., ¶ 20. The posting of this information alone
 13 would have been sufficient to put Zoomin on notice of infringing use. Zoomin's
 14 argument that it did not act intentionally is therefore meritless.

15 2. Zoomin's Conduct was Expressly Aimed at California

16 "The second part of the *Calder*-effects test requires that the defendant's
 17 conduct be expressly aimed at the forum." *Brayton Purcell LLP v. Recordon &*
 18 *Recordon*, 606 F.3d 1124, 1129 (9th Cir. 2010). Courts have emphasized that
 19 "something more than foreseeability" is required in order to justify the assertion of
 20 personal jurisdiction, and that "something more" has come to mean conduct
 21 expressly aimed at the forum. *Id.* The Ninth Circuit recognizes that a defendant's
 22 "willful infringement of [a forum-resident's] copyright, and its knowledge of both
 23 the existence of the copyright and the forum of the copyright holder, is sufficient
 24 'individualized targeting' to establish the 'something more' necessary to satisfy the
 25 express aiming requirement." *Wash. Shoe Co.*, 704 F.3d 668, 678-79.

26 In *Washington Shoe*, the plaintiff, a Washington-based company, brought
 27 suit in a Washington district court after discovering that the defendant, with whom
 28 plaintiff had a prior business relationship, had been selling plaintiff's copyrighted

boot designs in Arkansas. 704 F.3d at 671. As is the case here, the plaintiff notified the defendant of the alleged infringement. *Id.* The Ninth Circuit found personal jurisdiction over the defendant, holding that the defendant “expressly aimed” its conduct at Washington because the defendant “*knew* that its intentional acts would impact [defendant’s] copyright by virtue of the cease-and-desist letter it had received. *Id.* at 678; *see e.g., AirWair Int’l Ltd. v. Schultz*, 73 F. Supp. 3d 1225, 1235 (N.D. Cal. 2014) (express aiming requirement satisfied after defendant was told that its continued trademark infringement would draw legal attention from plaintiff); *Third Estate LLC v. Cultivation, Ltd.*, No. 14-05125 MWF(JPRx), 2015 U.S. Dist. LEXIS 145107, at *10 (C.D. Cal. Oct. 23, 2015) (holding that “express aiming” was satisfied when the out of state defendant received notification of alleged trademark infringement); *Dahdoul Textiles, Inc. v. Zinatex Imps., Inc.*, No. 2:15-cv-04011-ODW(ASx), 2015 U.S. Dist. LEXIS 113469, at *5-6 (C.D. Cal. Aug. 25, 2015) (holding that defendants expressly aimed their conduct at the forum state by willfully infringing the copyright of a California corporation after being informed of the copyright by the manufacturer, and after being sent a cease-and-desist letter by the plaintiffs).

The Supreme Court recently addressed the express aiming issue in *Walden v. Fiore*, 134 S. Ct. 1115 (2014). There, Nevada residents brought an action in a Nevada district against a DEA resident for alleged Fourth Amendment violations that occurred in Georgia. *Id.* at 1119-20. The Supreme Court held that the district court could not exercise personal jurisdiction over the defendant because, even though plaintiffs were from Nevada, none of the challenged conduct had anything to do with Nevada itself. *Id.* at 1125.

The *Walden* court contrasted the facts before it with *Calder*, which involved a claim for libel against out of state defendants. *Id.* at 1124. The Court reasoned that unlike a Fourth Amendment violation, the reputation-based ‘effects’ of the alleged libel in *Calder* connected the defendants to California, not just to the

1 plaintiff. *Id.* at 1124-25. The “crux of *Calder*,” according to the Court, was that
 2 the reputational injury caused by the defendants would not have occurred but for
 3 the fact that the defendants wrote an article for publication in California that was
 4 read by a large number of California citizens. *Id.*

5 Like the *Walden* court, the Ninth Circuit, in *Pebble Beach Co. v. Caddy*,
 6 similarly found that defendant did not aim its tortious conduct at the forum state.
 7 453 F.3d 1151, 1158 (9th Cir. 2006). In *Pebble Beach*, a famous California golf
 8 resort sued the defendant for intentional trademark infringement and dilution for
 9 operating a bed and breakfast operating in England called “Pebble Beach.” *Id.* at
 10 1153. Since plaintiff, in its complaint, provided no facts suggesting that defendant
 11 knew his intentional act would have an impact in California, the court held that
 12 personal jurisdiction was not proper regardless of the “foreseeable effects”
 13 defendant’s conduct cause in the forum. *Id.* at 1158.

14 In the present action, the facts are much more analogous to *Washington Shoe*
 15 and *Calder* than to *Walden* or *Pebble Beach*. The Complaint clearly establishes
 16 that Zoomin knew that Jukin is a forum resident because Jukin alleges that
 17 Defendant visited Jukin’s Los Angeles headquarters. (Comp. ¶ 17). The
 18 Complaint similarly alleges that Zoomin had knowledge of the alleged
 19 infringement. *Id.* Despite Zoomin’s denial of any knowledge of Jukin’s
 20 copyrighted works, Zoomin knew that its alleged unlawful conduct would affect
 21 California after Riemens received repeated emails notifying him of the alleged
 22 infringement. Saless Decl., ¶¶ 7-8, Ex. A. Like the continued infringement
 23 perpetrated by the defendants in *Washington Shoe* following receipt of cease and
 24 desist letters, Zoomin’s continued infringement after receiving notice of its
 25 infringement, is sufficient “individualized targeting” to satisfy the “express aiming
 26 requirement.” Unlike in *Pebble Beach*, the facts and allegations here do not
 27 merely show *foreseeable* impact on the forum state, they show a *knowing* one.
 28

Further, unlike the claim in *Walden*, copyright infringement of the Jukin Original Videos does not merely affect Jukin personally, but broadly affects California. Like the reputation-based libel claim in *Calder*, copyright infringement causes Jukin to suffer similar reputational harm in this State, lost revenue derived from licensing fees, and monetization loss stemming from YouTube viewers diverted to Defendant's site. Compl., ¶ 137.

If anything, the facts here support jurisdiction even more than they did in *Calder* because Zoomin cannot be characterized as merely an out of state defendant. Zoomin's Los Angeles office serves as the headquarters of its U.S. sales, business development, and marketing departments; Zoomin maintains partnerships with California-based video streaming companies Yahoo! and YouTube; and it utilizes Los Angeles-based freelance video journalists. Because of Zoomin's close ties with California, Zoomin is able to obtain a competitive advantage in this State while misappropriating the copyrighted works of Jukin. It seems wholly unreasonable that Zoomin can have this presence in California, knowingly steal Jukin's intellectual property, and still claim that Jukin must go to the Netherlands to enforce United States copyrights.

Accordingly, Jukin's allegations regarding Zoomin's commercial activities in California, coupled with Zoomin's actual knowledge of the effects of its actions in California sufficiently establish that Zoomin aimed its actions at this state.

3. Zoomin Caused Harm it Knows is Likely to be Suffered in the Forum State

Zoomin caused harm that it knows is likely to be suffered in the forum state. In determining the location of a corporation's injury, Ninth Circuit precedent recognizes that a corporation can suffer harm both where the bad acts occurred and where the corporation has its principle place of business. *Mavrix*, 647 F.3d at 1231 (citing *Dole Food Co.*, 303 F.3d at 1113). Further, "[t]he economic loss caused by the intentional infringement of a plaintiff's copyright is foreseeable. *Mavrix*, 647

1 F.3d at 1231.

2 Here, it is foreseeable that the economic loss to Plaintiff would be
3 inflicted in California, the site of Plaintiff's principal place of business. Moreover,
4 Zoomin knew that its intentional acts would have an impact on Plaintiff and it
5 knew Plaintiff had its headquarters in the state of California. Compl., ¶ 17.
6 Zoomin knew that the impact of its willful infringement of Plaintiff's copyright
7 would cause harm likely to be suffered in the forum. As a consequence, Zoomin
8 can "reasonably anticipate being haled into court" in California. *World-Wide*
9 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

10 **C. Jukin's Claim Arises Out of Zoomin's Forum-Related Activities**

11 As Zoomin correctly points out, the second prong of the specific jurisdiction
12 test is satisfied if the plaintiff would not have been injured "but for" the
13 defendant's forum related activities. *See Schwarzenegger*, 374 F.3d at 802. In this
14 case, Zoomin's knowing infringement was California-related, even if it did not
15 occur entirely—or even primarily—in California. In its Motion, Zoomin attempts
16 to mitigate the extent to which it is inexorably tied with the State of California
17 Mot. at 10. But, the suit need not arise from Zoomin's activities in California. *See*
18 *Aweida Arts, Inc. v. Pure Glass Distrib., Inc.*, No. C14-757RAJ, 2015 U.S. Dist.
19 LEXIS 68537, at *15 (W.D. Wash. May 27, 2015). Instead, the second prong of
20 the personal jurisdiction analysis requires only "forum-related" activity.
21 *Schwarzenegger*, 374 F.3d at 802.

22 As explained in *Washington Shoe*, a court "may exercise personal
23 jurisdiction over a defendant who engages in an intentional act that causes harm in
24 the forum state, even if that act takes place outside the forum state." 704 F.3d at
25 673. Here, unlike in *Washington Shoe*, Zoomin has engaged in substantial conduct
26 within the state of California via its Los Angeles office where its U.S. sales,
27 business development, and marketing departments operate; its partnerships with
28 California-based video streaming companies Yahoo! and YouTube; and its use of

Los Angeles-based freelance video journalists. But even without these myriad contacts, Jukin's suit arises from allegations of Zoomin's forum-related activity—knowing and intentional infringement of a California corporation's copyrights for the purpose of competing with that company in California.¹ *Aweida Arts*, 2015 U.S. Dist. LEXIS 68537, at *15; *AirWair*, 73 F. Supp. at 1238 (holding that but for out of state defendant's alleged infringement, plaintiff would not have endured harm).

D. The Exercise of Jurisdiction is Reasonable

Since Plaintiff has borne its duty of making a *prima facie* showing of Zoomin's "minimum contacts" with California, the burden shifts to Zoomin to "present a *compelling case* that the presence of some other considerations would render jurisdiction unreasonable." *Ballard*, 65 F.3d at 1500 (quoting *Burger King*, 471 U.S. at 477). Courts in the Ninth Circuit evaluate seven factors to determine the reasonableness of a forum's exercise of jurisdiction: (1) the extent of purposeful interjection; (2) the burden on the defendant of defending in the forum state; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in the dispute; (5) the most efficient forum for judicial resolution of the dispute; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum. *Directv, Inc. v. EQ Stuff, Inc.*, 207 F. Supp. 2d 1077, 1081 (C.D. Cal. 2002) (quoting *Ballard*, 65 F.3d at 1500). Zoomin has not carried the "heavy burden of rebutting the strong presumption in favor of jurisdiction." *Ballard*, 65 F.3d at

¹ The *Washington Shoe* court considered only the purposeful direction prong of the three-part test for personal jurisdiction. 704 F. 3d at 672 ("Only the first prong is at issue in this case."). "Nonetheless, its holding that conduct outside the forum state constitutes purposeful direction would be meaningless if the defendant could avoid the jurisdictional consequences of that action merely by noting that it occurred outside the forum state." *Aweida Arts*, 2015 U.S. Dist. LEXIS 68537, at *15 n.1.

1 1500. This is because it cannot, as the great majority of these factors weigh in
 2 favor of the Court's retention of jurisdiction.

3 First, despite Zoomin's contentions to the contrary, Zoomin has most
 4 certainly interjected itself into California. Zoomin has engaged in substantial
 5 conduct within the state of California via its Los Angeles office where its U.S.
 6 sales, business development, and marketing departments operate; its partnerships
 7 with California-based video streaming companies Yahoo! and YouTube; and its
 8 use of Los Angeles-based freelance video journalists.

9 Second, Zoomin claims that litigating this action in the United States would
 10 pose "a great burden" to Zoomin because individuals with knowledge reside in the
 11 Netherlands, and do not speak English as a primary language. But this contention
 12 finds no support in the facts. Email correspondence between Jukin and Zoomin
 13 CEO Jan Riemens reveals that Riemens, as head of the Company, speaks fluent
 14 English and travels to the United States frequently for business. *See* Sales Decl.,
 15 ¶¶ 2-5, Ex. A. *See Dole Food Co.*, 303 F.3d at 1115 ("several facts mitigate the
 16 burden in this case. [Defendants] are able to speak, read, and write English with
 17 ease."). Indeed, Mr. Reimans met with Jukin in Jukin's Los Angeles office and the
 18 entire meeting was conducted in English without a translator. *See* Sales Decl., ¶¶
 19 4-5. The fact that it would be expensive and inconvenient for Zoomin to defend
 20 themselves in this forum is not dispositive. *See Dole Food Co.*, 303 F.3d at 1115.

21 Third, determining conflict with the sovereignty of a defendant's state
 22 entails an examination of the competing sovereign interests in regulating the
 23 defendant's behavior. *Id.* However, since sovereignty concerns inevitably arise
 24 whenever a U.S. court exercises jurisdiction over a foreign national, this factor is
 25 "by no means controlling," *Ballard*, 65 F.3d 1495, 1501 (9th Cir. 1995).
 26 Otherwise, this factor "would always prevent suit against a foreign national in a
 27 United States court." *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1333 (9th Cir.
 28 1984). Here, Jukin's complaint only raises questions of U.S. copyright law, it does

1 not allege any cause of action under the laws of the Netherlands, or any other
 2 sovereign country.

3 Fourth, California has an interest in adjudicating disputes involving
 4 defendants that “use[] California companies to perpetuate Copyright
 5 infringement.” *DFSB Kollektive Co., Ltd. v. Tran*, No. 11-CV-01049-LHK, 2011
 6 U.S. Dist. LEXIS 147538, at *13 (N.D. Cal. Dec. 21, 2011). In addition, Jukin is a
 7 tax paying entity headquartered in Los Angeles. It avails itself of California’s laws
 8 and has every right to seek redress for wrongs committed against it in this State.

9 Fifth, this efficiency factor, focused on the location of the evidence and
 10 witnesses “is no longer weighed heavily given the modern advances in
 11 communication and transportation.” *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d
 12 1316, 1323 (9th Cir. 1998). Here, Zoomin’s CEO has taken advantage of these
 13 advances as he travels to the United States for business purposes. Saless Decl., ¶ 3.
 14 Ex. A. Moreover, Zoomin has an office in Los Angeles from which it conducts its
 15 sales, business development, and marketing efforts in the State. Bentz Decl., ¶ 3,
 16 7-9, Ex. A, E-G.

17 Sixth, it is convenient for Jukin to litigate this dispute in the forum in which
 18 it was harmed by defendant. Jukin conducts no business operations in the
 19 Netherlands and would be unduly damaged if it was forced to litigate this dispute
 20 in a foreign jurisdiction in which it maintains no contacts.

21 Seventh, despite Zoomin’s contention that Jukin should have filed this action
 22 in the Netherlands, Jukin raises no claims under Dutch law. To the contrary, all of
 23 Jukin’s prayers for relief arise under U.S. or California law.

24 Thus the exercise of personal jurisdiction over Zoomin in California would
 25 be reasonable.

26 * * *

27 By targeting a California resident as the victim in its intentional copyright
 28 infringement, Zoomin purposefully directed its illegal activities toward California

and caused damage therein. The exercise of jurisdiction over Zoomin under these circumstances is warranted, and would not offend “traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal citations and quotation marks omitted).

IV. SERVICE WAS PROPER

A. Matt Slan was Personally Served with Process

The party alleging improper service of process bears a “substantial” burden to prove that he is entitled to relief. *S.E.C. v. Internet Sols. for Bus. Inc.*, 509 F.3d 1161, 1166 (9th Cir. 2007). “A signed return of service constitutes prima facie evidence of valid service which can be overcome only by strong and convincing evidence.” *Id.* (internal quotations omitted).

Here, process server Alan Juarez signed a proof of service indicating that he personally served Matt Slan, Zoomin’s U.S. Vice-President of Sales and Business Development, on September 30, 2015 at 9:35 a.m. Document 10. Mr. Juarez further indicated that he had a photograph of Mr. Slan, and the person served matched the photograph. Bentz Decl., Ex. I. Mr. Slan contradicts Mr. Juarez’s signed proof of service with his own signed declaration that the summons and complaint was left with a general receptionist for the office building. Slan Decl., ¶ 5. Mr. Slan’s declaration, contrasted with the sworn proof of service from an independent party, simply does not rise to the level of “strong and convincing evidence” necessary to rebut the presumption of valid service. *Burda Media, Inc. v. Viertel*, 417 F.3d 292, 302-03(2d Cir. 2005) (finding that defendant received service of process where the only evidence that he did not was his own affidavit denying the receipt of summons).

B. Serving Matt J. Slan was Appropriate

Federal Rule of Civil Procedure 4(h)(1)(B) permits for service to be performed on a domestic or foreign corporation “by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any

other agent authorized by appointment or by law to receive service of process.” Fed. R. Civ. P. 4(h)(1)(B). In the Ninth Circuit, “service of process is not limited solely to officially designated officers, managing agents, or agents appointed by law for the receipt of process.” *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988). Rather, “service can be made upon a representative so integrated with the organization that he will know what to do with the papers.” *Id.* “Service is sufficient when made upon an individual who stands in such a position as to render it fair, reasonable and just to imply the authority on his part to receive service.” *Id.*

In *Direct Mail Specialists*, a process server left the summons and complaint with the receptionist of the defendant after she stated that she was the only person at the office. 840 F.2d at 687. In holding that process was properly served, the court acknowledged that (1) the receptionist, as the only employee in the office, demonstrated “that more than minimal responsibility was assigned to her,” and (2) “actual notice” was demonstrated by the fact that the company’s president complained about being served the following day. *Id.* at 689.

Here, Zoomin’s Vice President of Sales in the United States, Mr. Slan was successfully served with process at Zoomin’s Los Angeles office. Document 10. For the purposes of this Motion, Zoomin contends that Mr. Slan is a “free lance consultant.” Mot. at 13. This assertion is undermined by the fact that in several publically accessible websites, including Zoomin’s corporate website, Mr. Slan is listed as an officer, and specifically the Vice-President of Sales and Business Development in the United States. Bentz Decl., ¶ 4, Ex. B. As the facts indicate, Zoomin is publically holding out Mr. Slan as a Zoomin Vice-President for the purpose of increasing its foothold in California, while simultaneously diminishing his substantial role in the company in an attempt to quash service of process. Zoomin cannot have it both ways. According to online periodicals, and representations Zoomin has made in its own corporate website, a reasonable person

1 would conclude that Mr. Slan would “know what to do with the papers.” *Direct*
 2 *Mail Specialists*, 840 F.2d at 688.

3 Mr. Slan’s capability of accepting service is additionally supported by Mr.
 4 Slan’s own assertion that he “notified Zoomin.TV by emailing a copy of the papers
 5 and mailing the papers to Zoomin.TV in the Netherlands.” Slan Decl., ¶ 6. This
 6 communication shows actual notice, and therefore makes serving Mr. Slan on
 7 behalf of Zoomin both reasonable and fair. See *Allphin v. Peter K. Fitness, LLC*,
 8 No. 13-cv-01338-BLF, 2014 U.S. Dist. LEXIS 89395, at *13, 2014 WL 2961088
 9 (N.D. Cal. June 30, 2014).

10 **V. CONCLUSION**

11 Based on the foregoing, Defendant’s Motion should be denied in its entirety.

12
 13 DATED: November 23, 2015

VENABLE LLP

14
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